

SAFE 1 RULE (WITHDRAWAL OF CALIFORNIA WAIVER FOR LIGHT-DUTY GHG/ZEV STANDARDS)

ISSUE SUMMARY:

In a single Federal Register notice, DOT/NHTSA found that California's greenhouse gas (GHG) standards and zero-emission vehicle (ZEV) mandates are preempted by EPCA, and EPA withdrew California's waiver for these same standards under CAA 209(b). 84 FR 51310 (Sept. 27, 2019) (informally known as the "SAFE 1" rule). These actions are currently being challenged by a number of states, local governments, NGOs and industry groups.

UPCOMING MILESTONES:

- Oral argument TBD – United States' brief was filed September 9, 2020 and briefing is scheduled to be completed by October 27, 2020.

BACKGROUND:

On September 27, 2019, EPA and US DOT's National Highway Traffic Safety Administration (NHTSA) published in the Federal Register a notice taking two distinct but related actions. First, NHTSA found, and adopted regulations to reflect, that the Energy Policy and Conservation Act (EPCA) preempts state regulation of greenhouse gas (GHG) emissions from motor vehicles, including California's program of greenhouse gas (GHG) standards and its mandate for minimum sales of zero emissions vehicles (ZEVs) such as battery electric cars. NHTSA concluded that GHG emissions standards are "related to" fuel economy standards because there is a direct mathematical relationship between GHG emissions and fuel consumption and a limit on GHG emissions necessarily limits fuel consumption. Thus, EPCA's preemption of state fuel economy standards necessarily encompasses state GHG emissions standards and ZEV requirements.

Second, EPA withdrew the waiver of federal preemption of state emissions standards it had previously issued with respect to the most recent California GHG standards and ZEV requirements (part of California's Advanced Clean Car program). EPA concluded first that if the California standards were preempted by EPCA then they were void ab initio and it was appropriate to withdraw the waiver to reflect that fact. EPA concluded second that the ability of California to adopt its own emissions standards under the Clean Air Act was intended to allow California to address local problems caused by local conditions and local emissions. By contrast, GHG standards are intended to address a global problem which affects other states besides California and cannot be meaningfully addressed by California's standards. EPA thus concluded that the environmental effects of elevated GHG concentrations are not the kind of "compelling and extraordinary conditions" necessary to support a waiver of federal preemption for California's standards.

Similarly, EPA concluded that Section 177 of the Clean Air Act, which allows other states to adopt California's motor vehicles standards (provided certain conditions are met), does not authorize other states to adopt GHG standards, but only standards that affect local or regional air quality (e.g., criteria pollutant standards).

A number of states, local governments, environmental organizations and industry groups have challenged the agencies' actions, arguing that NHTSA erred in concluding GHG standards and ZEV requirements are preempted under EPCA, that EPA lacks authority to withdraw its waiver, and that EPA's reasons for withdrawing the waiver and its interpretation of Section 177 are invalid.

KEY EXTERNAL STAKEHOLDERS:

☒ Congress ☒ Industry ☒ States ☐ Tribes ☐ Media ☒ Other Federal Agency

☒ NGO ☐ Local Government ☐ Other _____

MOVING FORWARD:

- The case defense is proceeding.

LEAD OFFICE/REGION:

OGC `

OTHER KEY OFFICES/REGIONS:

OAR